IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) Bhagwana Ram Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.851/2006

(2) Megha Ram Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.852/2006

(3) Pema Ram Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.853/2006

(4) Bhagirath Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.854/2006

Against order dated 05.09.2006 passed by Chief Judicial Magistrate, Jodhpur in connection with First Information Reports No. 89/2006, 90/2006, 91/2006, 92/2006 of PS Khedapa.

DATE OF ORDER :: 20th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Sandeep Mehta for petitioners.
Mr. V.R. Mehta, P.P.

BY THE COURT:

These four petitions arise out of the order passed by learned Chief Judicial Magistrate, Jodhpur in relation to First Information Reports No. 89/2006, 90/2006, 91/2006, 92/2006 of Police Station Khedapa, deciding four applications moved by the present petitioners under

Sec.457 Cr.P.C. for release of vehicles seized for contravention of Sec.3/7 of the Essential Commodities Act.

The similarity in the present four matters is that the vehicles in question sought to be released viz. Tankers bearing registration numbers G.J.12–W-9330, R.J.07–GA–1671, G.J.12–W-6524, G.J.12–W-5606 were all trapped by the Khedapa police on 28.07.2006 while they were on their way to transport diesel from the State of Punjab to the State of Rajasthan carrying with them different quantity of diesel ranging from 10000 to 20000 liters. As per investigation, there is difference of about 3 to 4 rupees in the price of diesel in the two States and in order to earn profit this illegal transportation of diesel was made for its sale in district Sirohi and various other parts of Rajasthan State. After seizure, complaint in this regard has been presented before the Collector, Jodhpur on 06.08.2006 under Sec.6(A) by the police. Thereafter, the present petitioners moved the Court of Chief Judicial Magistrate, Jodhpur and filed applications under Sec.457 Cr.P.C. for the release of vehicles, which have been rejected by the order under challenge, hence the present revision petitions.

Since the prayer in all the petitions is common for quashing the impugned order dated 05.09.2006 and to release the vehicles in question, these revisions are being disposed of jointly by this single order.

The contention of the learned counsel for the petitioners is that in the instant matters trial Court has not appreciated the matters in proper perspective while rejecting the applications moved for the supardagi of the vehicles in question as keeping the vehicle at the police station or elsewhere without any use of them will definitely damage the vehicles and after lapse of time the vehicles will be of no use for anybody and it would result in national wastage. It has been submitted that Sec.6A of the Essential Commodities Act also does not create bar in relation to considering the matters of supardagi. It has also been submitted that in the present case it is only the diesel regarding which the proceedings under the Essential Commodities Act were initiated while seizing the diesel and as far as the vehicles in question are concerned, no steps have been taken. In support of his submissions, the learned counsel has placed reliance on cases reported in 2003

Cr.L.R. (SC) 103 (Sunderbhai Ambalal Desai Vs. State of Gujarat) and two decisions of this Court reported in 2005 WLC (Raj)UC 213 (Sajjan Lal Vs. State), 2006(1) RDD 373 (Sant Lal Vs. State of Rajasthan), 2005 (3) RCC 1206 (Data Ram Vs. State of Rajasthan) and 1998-99 (suppl.) Cr.L.R. (Raj.) 181 (Chittarmal Vs. State of Rajasthan).

On the other hand, learned Public Prosecutor opposed the revisions but has not controverted the submission that thus far no proceeding in relation to confiscate the vehicles have been initiated and submitted that the trial Court has passed a reasoned order, therefore, that requires no interference by this Court.

I have considered the submissions made before me and carefully examined the authorities cited before me.

The Hon'ble Apex Court, in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat, has observed that it is of no use to keep the seized vehicles at police stations for a long period and it is for the Magistrate concerned to pass appropriate orders immediately by taking

appropriate bond and guarantee as well as securing the return of the vehicles, if required at any point of time.

In the case of Chittar Mal Vs. State of Rajasthan, the contention of the Public Prosecutor that the learned Judicial Magistrate has no powers to release the cylinders on Supardgi but only the District Magistrate may do so, was repelled and the gas cylinders seized from the possession of the accused were ordered to be delivered on Supardagi in the above case relating to offence under Sec.3/7 of the Essential Commodities Act for the reason that proceedings under Sec.6(C) of the Act were not pending. The Court opined that the provisions of Sec.457 Cr.P.C. were attracted as proceedings before the District Magistrate were not pending and since the applicant had produced documents in relation to the gas cylinders, the denial of supardgi thereof by the Addl. Sessions Judge, on the ground that the cylinders were to be got examined by the FSL, was not proper. The Court was further of the opinion that even after delivery of the cylinders on Supardagi the cylinders could be examined by the FSL.

In the case of Data Ram Vs. State of Rajasthan, it has been observed by the Court:

> ". . . it is clear that the release of the truck was declined by both the courts below on sole ground that it is one of material evidence and will be required during investigation and because proceedings under Sec.6A of the Essential Commodities Act are yet to be initiated. It is not in dispute that the truck is lying in custody of SHO PS Mania in an open place and chances of its being damaged on account of its exposure to natural effects like sun and rain etc., which is imminent, rather it will diminish its value and also deprive the petitioner of his regular income, which will also add to national loss.
>
> Despite query made by this Court vide order dated 30.05.05 as to whether any application under Sec.6A of the Essential Commodities Act has been moved by the SHO before the competent authority or not, the prosecution has failed to respond the query.
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> It is a common experience that whenever a vehicle is seized and kept at Police Station, its condition deteriorates day by day, and one day it becomes a scrap even before trial of the case is concluded and thereby it is not only becomes individual loss but also a national loss because if the vehicle is on its wheels then it is used for transportation and earns revenue to the State also and therefore, as far as practical vehicle should not be permitted to be ruined at police station, as has been held by this Court in Chanduram Vs. State (1994 (2)RLR 507)...
>
> I am not satisfied with the justification furnished by courts below in rejecting application filed under Sec.457 Cr.P.C. Consequently, this

> petition is allowed. Orders dated 29.04.05 of the CJM and dt. 26.5.05 of the Additional Sessions Judge, Dholpur are hereby set aside. Hence taking into consideration all the facts and circumstances of the case, truck No.MP-05/E/2425 seized in FIR No.98/05 registered PS Mania (Dholpur) for offence U/s. 3/7 of Essential Commodities Act be released on superdginama and delivered to the petitioner. . . .”

In the midst of arguments, it was asked from the counsel for the petitioners that as to whether any proceeding has been taken for confiscation of the Vehicles under Sec.6A of the Act, the learned counsel for the petitioners intimated that no such proceedings for confiscation of the vehicles have been taken so far and in relation to the diesel seized the proceedings were drawn under the Essential Commodities Act. The above submission of the learned counsel for the petitioners has not been controverted.

Learned Public Prosecutor was granted time to confirm the factum of pendency of any proceeding in relation to confiscation of the vehicles. Learned Public Prosecutor today informs that no such proceeding is pending for confiscating the vehicles in question.

Thus, keeping in view the facts of the present case and the law laid down, I deem it proper to set aside the order passed by learned trial Court rejecting the applications moved for Supardagi of the vehicles.

Accordingly, while allowing the revision petitions, the order impugned is set aside and it is directed that the vehicles bearing registration Numbers G.J.12–W-9330, R.J.07–GA– 1671, G.J.12–W-6524, G.J.12–W-5606 shall be released and delivered to the respective petitioners during pendency of investigation, inquiry and trial, on each of them furnishing a security in a sum of Rs.4 lacs to the satisfaction of the trial Court and fulfilling following conditions:

(1)that he shall get three set of coloured cabinet size photographs of the vehicle in question, each set showing (a)number plate; (b) Chassis number; (c) engine number; and (d) total body of the vehicle;

(2)that he shall not change the colour or alter numbers or tamper with the evidence in any manner;

(3)that without prior permission of the trial Court, he shall not transfer or alienate the said vehicle during pendency of the trial;

(4)that he shall produce the said vehicle before the trial Court and/or competent authority under the Essential Commodities Act as and when ordered.

(SATYA PRAKASH PATHAK)J.

/jpa